

B.

**Texas Department of Savings and
Mortgage Lending**

Industry

and

Departmental Operations

and

Legislative Activities

B. Texas Department of Savings and Mortgage Lending

1. Industry Status and Departmental Operations – State Savings Bank Activity:

a. Industry Status

State-chartered thrift assets under the Department's jurisdiction totaled \$9.9 billion as of March 31, 2013, and increased by 2.9% or \$276 million from March 31, 2012. A large portion of this growth was due to the conversion of three national banks and one federal thrift in 2012. The total number of state-chartered savings banks ("SSB's") as of March 31, 2013 was 30.

The annualized return on average assets for thrifts remains strong at 1.95% as of March 31, 2013. Increased profitability occurred in 43% of savings banks in comparison to one year prior. The percentage of unprofitable thrifts remains low at 13%. Aggregate earnings data is skewed somewhat by changes in asset sale behavior by one larger institution. However, there is observable pressure on net interest margins across the industry due to decreasing yields on real estate loans, both residential and commercial. This may be attributed to prolonged low market interest rates and increased competition for a limited selection of high quality loans. It is anticipated that both growth and earnings performance will continue to remain relatively stable or decrease modestly in the near term.

Nonperforming assets in state-chartered thrifts continued a three-year declining trend to 1.12% of total assets or 9.62% of equity capital plus loan loss reserves (excluding one institution that is active in acquiring discounted performing and nonperforming assets in the secondary market). Past due and nonaccrual loans, and foreclosed real estate remain high and continue to be monitored closely by state and federal regulators.

State thrift capital levels have continued to increase substantially in the first calendar quarter of 2013. Growth in equity came through \$49.0 million in net income and \$6.6 million in parent company injections, offset by \$5.8 million in dividends. State thrift capital levels remain strong and stable as represented by an aggregate 16.8% Tier 1 Leverage Capital Ratio. "Well-capitalized" is defined by federal regulation to be 5% or greater.

CAMELS ratings continue to improve among thrifts. Between December 31, 2012, and March 31, 2013, two additional state savings banks were upgraded to a composite 1 rating, bringing the total number of 1-rated state savings banks to seven, or 23% of the industry. 87% of state savings banks are now rated a composite 1 or 2.

b. Savings Bank Charter and Merger Activity

An application for Pioneer Bank, SSB, to reorganize into a holding company form of ownership was received on May 20, 2013. The application is pending.

An application to convert to a state savings bank charter by First Federal Community Bank, Paris, Texas, was received on May 3, 2013. The application is pending.

An application for the acquisition/merger of Peoples Bank, Colleyville, Texas, with and into Spirit of Texas Bank, SSB, was received on March 26, 2013. The application is pending.

A notice of intended merger by Orange Savings Bank, SSB, with and into a national bank was received on February 25, 2013. The merger was consummated effective May 31, 2013.

c. Wholesale Savings & Loan Charter and Merger Activity

There is currently no activity related to the wholesale savings & loan charter.

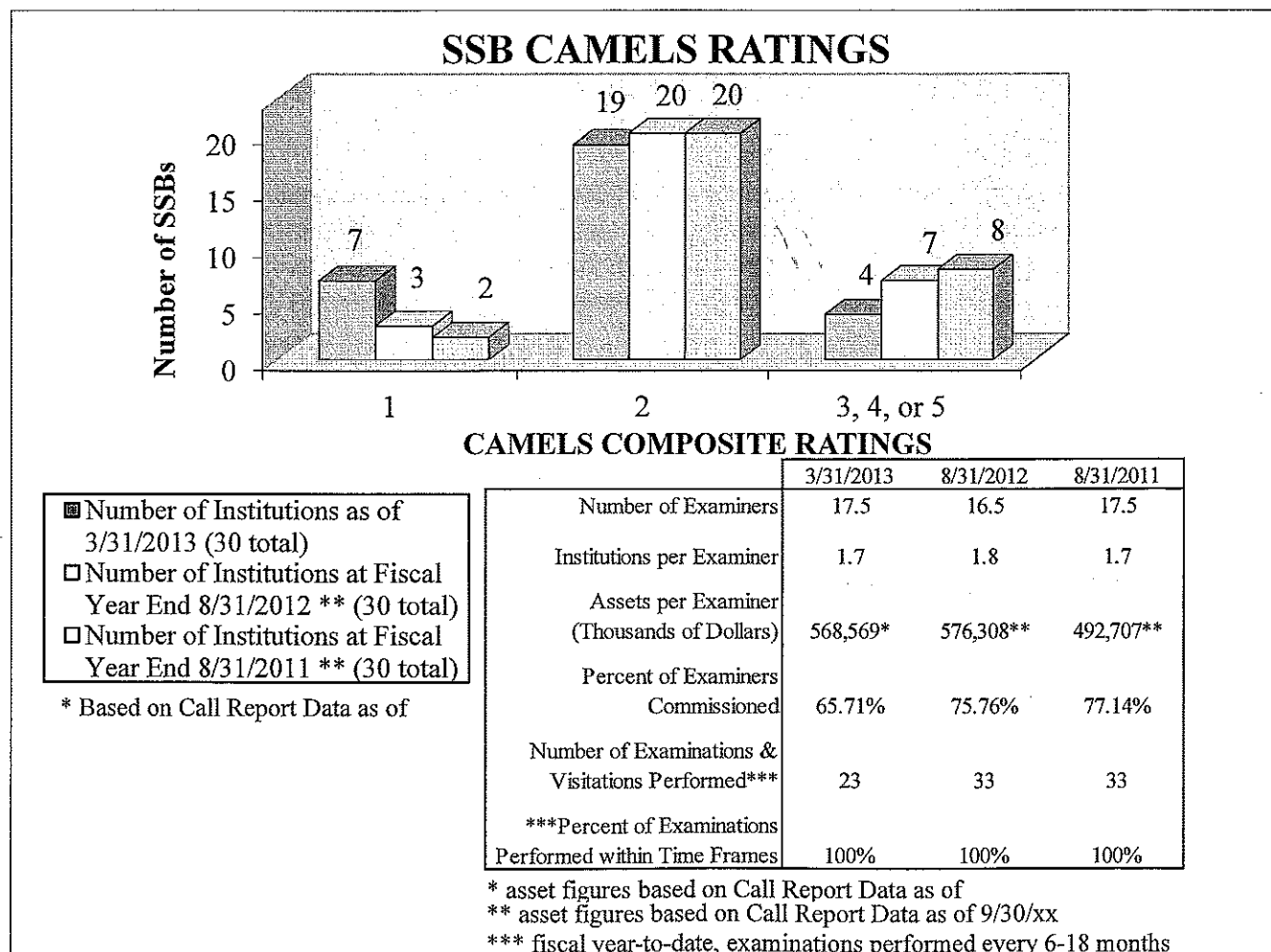
d. Recap of Problem Institutions/Enforcement Issues

There have been no changes in problem institutions since the previous meeting of the Finance Commission. Two state savings banks are currently rated a composite 4 or 5, and two are rated 3. In addition to normal supervisory activities, the progress of any "problem institution" is monitored through more frequent onsite visits and examinations, and offsite review of compliance with enforcement actions. The use of a Supervisory Agent is also routinely employed when deemed necessary.

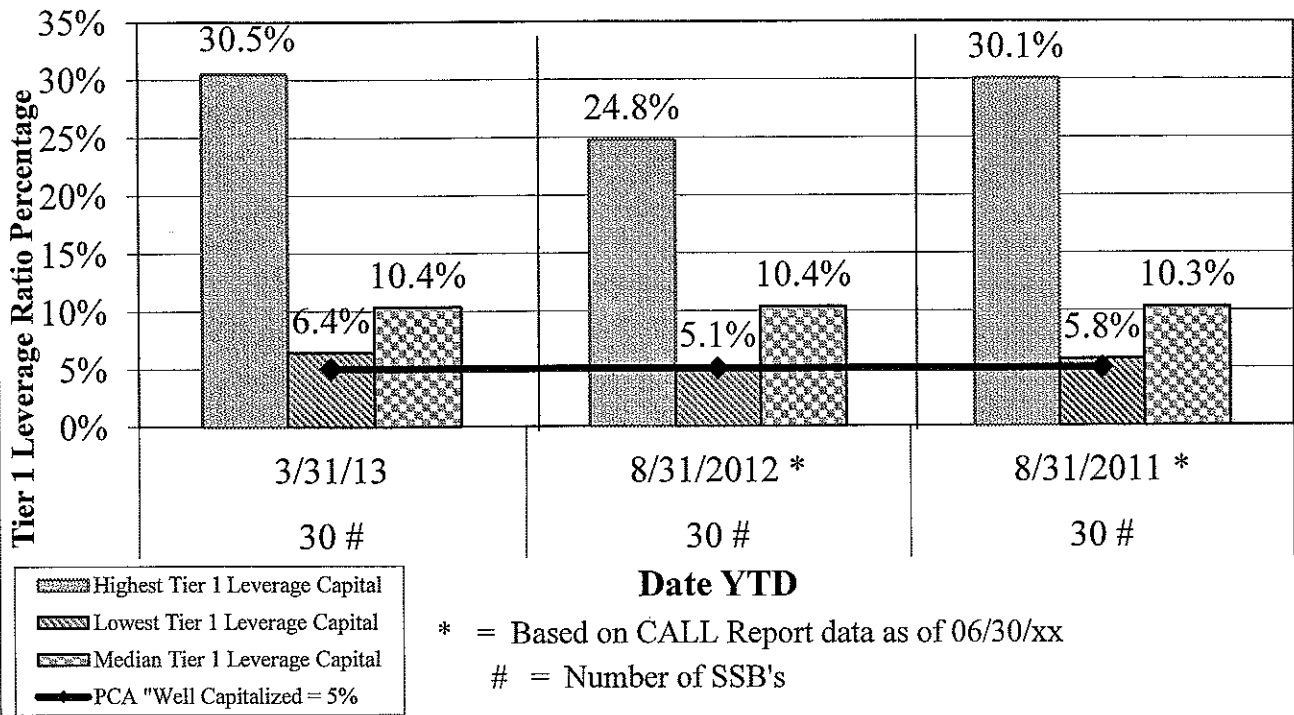
e. Other Issues

Proposed Legislative Changes

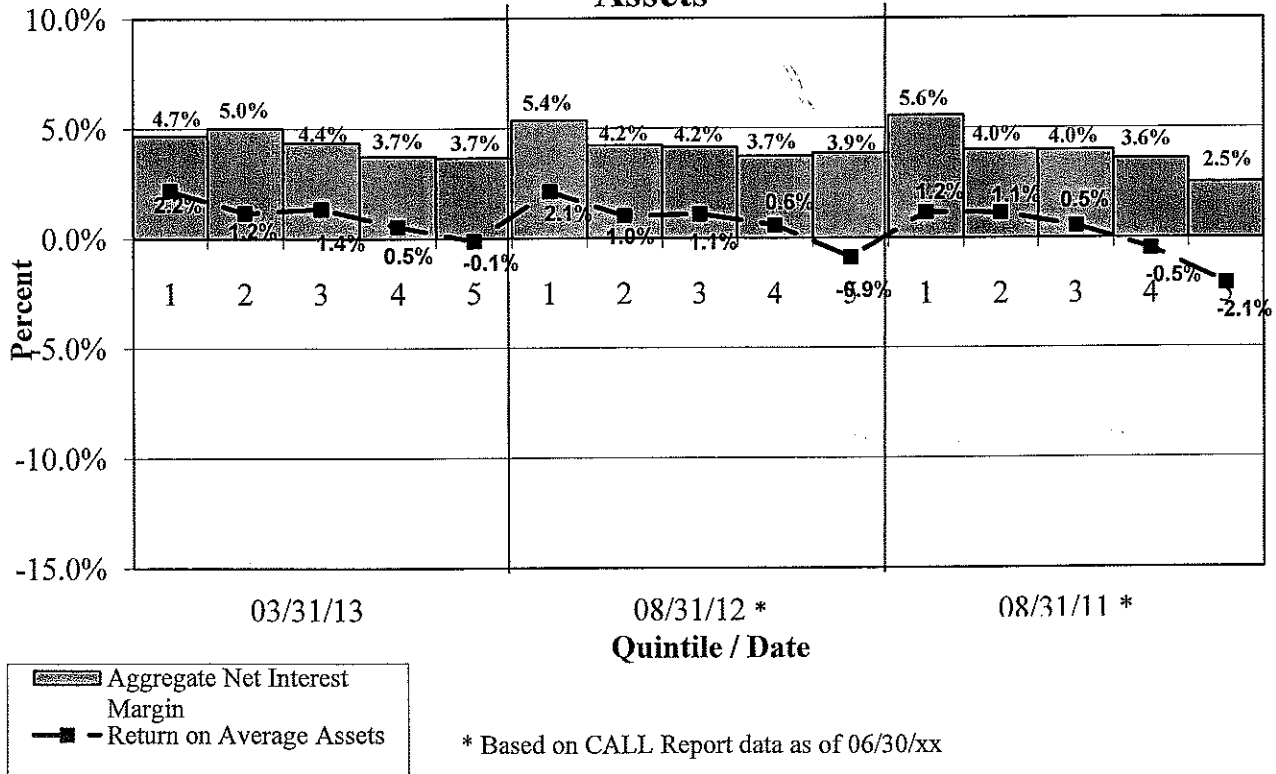
Senate Bill 1008, which seeks to eliminate obsolete practices and make clarifications to the current Finance Code, was sent to the Governor's Office on May 16, 2013. The Governor has until June 16, 2013 to sign or veto the bill, or to allow the bill to become law without his signature.



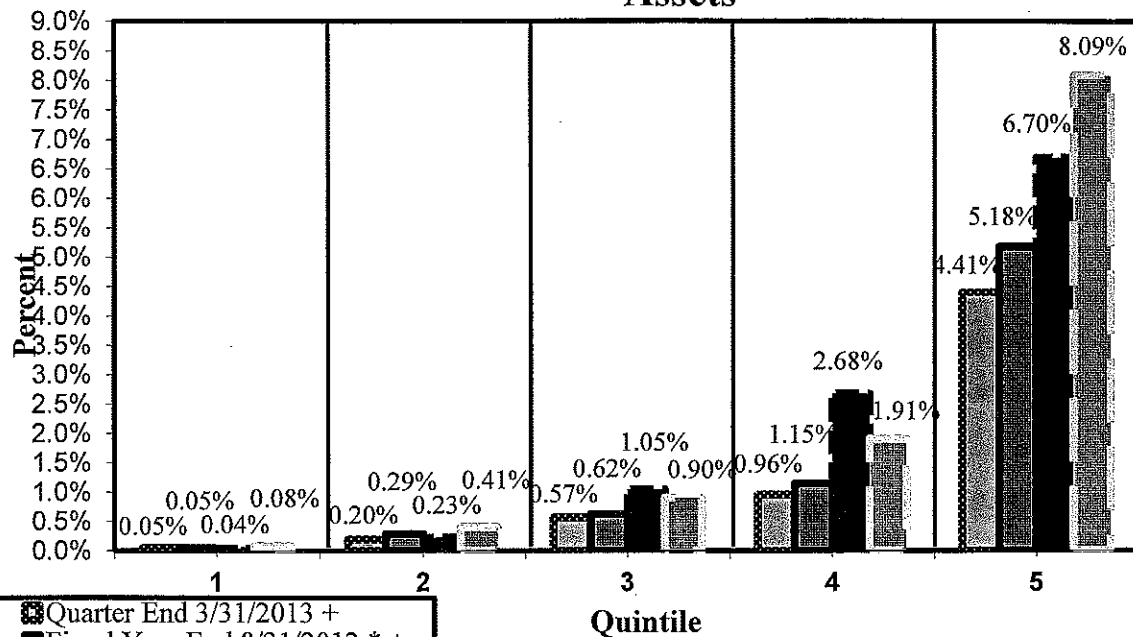
SSB's Tier 1 Leverage Capital Ratio



Aggregate Net Interest Margin / Return on Average Assets



Non-Performing Assets Plus Other Real Estate Owned to Assets



■ Quarter End 3/31/2013 +
 ■ Fiscal Year End 8/31/2012 * +
 ■ Fiscal Year End 8/31/2011 * +
 ■ Fiscal Year End 8/31/2010 * +

* Based on CALL Report data as of 06/30/xx

+ Excludes an institution whose core business is managing problem assets.

2. Industry Status and Departmental Operations – Mortgage Lending Activity:

a. Residential Mortgage Loan Originators

Current Licensing Population

License Type As of 05/31/2013	Approved		
	Company (MU1)	Branch (MU3)	Individual (MU4)
<i>Auxiliary</i>	14	n/a	42
<i>CUSO</i>	7	1	73
<i>FSC</i>	1	n/a	514
<i>Independent Contractor</i>	65	n/a	116
<i>Mortgage Company</i>	980	286	3,012
<i>Mortgage Banker</i>	365	1,474	10,589
<i>Mortgage Servicer</i>	107	n/a	n/a
Totals	1,539	1,761	14,346

For the 3rd quarter of fiscal year 2013, the Department received 1,782 new license requests and 12,582 other filings (amendments, sponsorships, etc.). On average, the Department continues to receive over 500 new license requests each month. During the month of April, the Department saw an approximate 25% increase in the number of filings, this same approximate increase was reported nationwide, but dropped back off in May. In reviewing the items filed in April, it appeared that a couple of nationwide companies made up the majority of the increased workload. On average, the Department continues to stay within ten business days for processing of filings.

b. Mortgage Examination

During first three quarters of fiscal year 2013, a total of 302 (286 full scope and 16 limited scope) examinations were conducted covering 2,038 licensees. The examinations are continuing to identify various degrees of unlicensed activity and other compliance issues.

In April, the Department sent five mortgage examiners to the AARMR / CSBS Advance Training School in St. Louis, MO. Three other mortgage examiners are scheduled to attend the annual AARMR conference in August. Annual SML in-house mortgage examiner training is scheduled for the week of September 16th in Austin.

c. Consumer Complaints/Legal Issues

Consumer Complaints - During the first three quarters of fiscal year 2013, a total of 710 consumer complaints were received. This represents a 41% increase when compared to the same period in fiscal year 2012. Loan servicing complaints represent 48% of the total number of complaints received during fiscal year 2013. As of May 31, 2013, there were a total of 120 open consumer complaints with 91% of the complaints aged less than 90 days. No complaints were aged over 180 days at the end of the quarter.

The Department and seven other state regulatory agencies participating in a complaint sharing pilot program executed agreements with the Consumer Financial Protection Bureau (CFPB) in April 2013. The agreement allows the Department access through a secure portal to view complaints filed with the CFPB on licensed or registered mortgage entities within the state. The portal will be continue to be enhanced based on feedback from states agencies.

Enforcement Activity - During the period of April 1, 2013, through May 31, 2013, the Department reports the following Enforcement Activity:

Substantive Disciplinary Cases

Notices of Hearings Issued: 7

Hearings Held: 0

Final Orders as a Result of a Hearing: 0

Agreed Orders: 14

Cease and Desist Orders: 12

Suspension Orders: 1

Orders Lifting Suspension: 0

Appeals of License Denials

Notices of Hearings Issued: 0

Appeals Received: 2

Hearings Held: 1

Final Orders as a Result of a Hearing: 0

Dismissal Orders: 0

Agreed Orders: 0

Non-Sufficient Funds (NSF)

Orders Issued: 0

Letters Issued: 0

Other Non-Substantive Orders (e.g. Notice of Violation, Take Affirmative Action, Assessing Admin. Penalty, etc.)

Other Non-Substantive Orders Issued: 41

Recovery Fund

Notices of Hearings Issued: 1

Hearings Held: 0

Final Orders as a Result of a Hearing: 0

Collection Cases Referred to the Attorney General

Collection Cases Referred to the Attorney General: 0

Legal Issues - There were no Recovery Fund claims paid during the period of April 1, 2013, through May 31, 2012.

d. Other Issues

None.

3. Fiscal/Operations Activity:

a. Funding Status/Audits/Financial Reporting

Funding Status/Budget – Staff is in the process of closing out the third quarter of FY13 and building the budget for FY14.

Audits – The agency has had visits from the Texas Workforce Commission, related to a routine Human Resources Policies and Procedures audit, and the internal auditors Garza/Gonzales, related to a Thrift Supervision Audit. Reports will be provided when they are available.

Legislative Session – Staff members are reviewing passed bills and evaluating the fiscal impact on the agency, staff and regulated industries.

b. Staffing

As of May 31, 2013, the agency was staffed at 60 regular full time employees and 1 regular part-time employee with 63 FTEs available.

A License and Permit Specialist vacancy is currently posted on the Department's website and applicants are being interviewed.

c. Other Issues

MIAC minutes.

Mortgage Industry Advisory Committee Minutes

10:05AM, Wednesday, June 5, 2013 – The Mortgage Industry Advisory Committee (MIAC) conducted its regularly scheduled meeting, in the second floor hearing room of the Finance Commission Building, 2601 N. Lamar, Austin, Texas.

Committee Members present were: Michael Morrow, Alvin Collins, Armando Barbosa, Lance Ludman and Judy Belanger. Savings and Mortgage Lending representatives present were Commissioner Douglas Foster, Deputy Commissioner and General Counsel Caroline Jones, Director of Licensing Steven O'Shields, Financial Examiner Justin Accola, and Executive Assistant Belinda B. Swan.

Commissioner Foster extended MIAC Member Susan Stewart's regrets, as she was unable to attend. He then introduced Financial Examiner Justin Accola, who attended on behalf of Chief Mortgage Examiner Tony Florence. Commissioner Foster also introduced Belinda B. Swan as his new Executive Assistant.

It was affirmed that minutes from September 26, 2012, were approved via email prior to this meeting.

Director of Licensing Steven O'Shields presented a licensing update. He discussed legislative matters; specifically he confirmed that the agency's "clean-up" bill, SB 1004 passed and has been signed by the Governor. He advised that the new bill has made it possible to begin the shift to a single license system for individuals. He provided a basic framework as to how the new system will work, and advised that the agency will work closely with NMLS to ensure a seamless transition. He discussed that the department will begin to deny renewal to license holders who are deficient, and that the agency is currently tracking deficiencies and will begin to assess penalties at the end of this year for failure to file quarterly call reports first required two years ago. Director O'Shields also discussed licensing statistics. Currently, there are 1,354 branches, 1,067 of which are company licenses. There are 1,839 bankers in branches, 355 company licenses, 1,474 branches, 107 NMLS servicers, and 14,346 NMLS licenses. Fiscal year- to-date, the agency has received 39,000 amendments (sponsorships; anything other than a license application), and has approved 4,220 applications. Specifically in the third quarter, ending May 31, 2013, the agency approved 1,600 new licenses. The agency is averaging 538 applications per month; however the agency did experience a 25% spike in applications in April. MIAC member Judy Belanger asked if there was any specific reason for the spike. Director O'Shields provided that several large, nationwide companies have expanded business, perhaps resulting in the spike. Commissioner Foster suggested that the spike may also be the result of the implementation of the uniform state test. Director O'Shields conveyed that the agency's licensing division strives to meet a 7-10 day turnaround on incoming filings and new applications (criminal and credit issues notwithstanding), and that the states are working towards more standardized nationwide credit determinants. Both Director O'Shields and Commissioner

Foster emphasized that the agency's staff welcomes calls and questions regarding the application process and any other issues that may arise throughout the application process.

Financial Examiner Justin Accola presented an examination and complaint update. As of the end of the third quarter (May 31st), 188 exams have been conducted, covering 733 license originators. Fiscal year-to-date, 490 exams have been conducted, covering 2,033 license originators. The agency has received 710 consumer complaints fiscal year-to-date, which is a 41% increase compared to the same time frame last year. Examiner Accola explained that the agency has seen a spike in two particular types of complaints: misleading practices (with an increase of 118%) and loan servicing/solicitation (with a 100% increase). Examiner Accola also explained that zero complaint investigations are over 180 days old. A question was raised regarding how many of the unlicensed activity complaints are truly related to unlicensed activity versus improper sponsorship. Examiner Accola explained that while specific numbers are not available, complaints are generally a good mix of the two.

Deputy Commissioner/General Counsel Caroline Jones reviewed enforcement activity. She mentioned that generally, the agency has experienced a downward trend in enforcement cases in the last few years. However, from 02/01/13 to 05/31/13, the agency has issued a total of nine substantive hearing notices, two of which have gone to hearing, and 41 agreed orders. Additionally, the agency has issued 75 non-substantive orders, with a total of 80 open enforcement cases as of 06/03/13. 57% of these cases relate to exams and technical violations, 15% relate to consumer complaints, 8% relate to the recovery fund, 8% relate to denials. Cases are open an average of 74 days, and any case open over six months is reviewed for status. Generally, cases over six months remain open due to issues out of the agency's control.

Commissioner Foster then addressed two federal-related issues, the first being the uniform state test, and that 10/01/13 is the last adoption date for this calendar year. Commissioner Foster anticipates more states will adopt a similar uniform testing system. The second federal issue discussed was that of the mortgage servicing settlement. Commissioner Foster explained that the agency received \$500,000 as a result. It has been determined that the money will be used as a mortgage fraud resource, assisting Texas district attorneys with the investigation and prosecution of potential mortgage fraud related criminal cases.

The proposed changes to Rules 80 and 81 were then discussed further. Director O'Shields walked the members through every section, explaining each change to be made, noting the majority of changes are intended to provide clarification and congruency between the two chapters and the recent statutory changes.

Commissioner Foster then took questions and comments regarding both the language of the proposed rule changes and the licensing process under the new uniform license system.

After input and further discussion by the MIAC Members, Commissioner Foster called for a motion to accept the proposed Rules to Chapter 80, with suggested changes. Member Alvin Collins made the motion and it was seconded by Member Mike Morrow. The motion carried unanimously.

A similar motion was called for by Commissioner Foster to accept the proposed Rules to Chapter 81. Member Lance Ludman made the motion and it was seconded by Member Judy Belanger. The motion carried unanimously.

Commissioner Foster reminded those in attendance of the next MIAC meeting, to be held on July 31st. A third meeting is also scheduled for October 2nd. Commissioner Foster also advised that the next Finance Commission meeting will be held on June 21st, and that new Finance Commission Member Will Lucas will be in attendance.

Commissioner Foster thanked those in attendance and adjourned the meeting at 11:20AM.

Douglas B Foster
Douglas B. Foster, Commissioner

11 June 13
Date

4. Discussion and Possible Vote to Take Action on the Publication for Comment of Proposed Repeal of 7 TAC § 76.4(a) regarding Financial Statements; Annual Reports; Audits.

PURPOSE: The purpose of the repeal is to reconcile a statutory change made by the 83rd Legislative Session with the rules relating to state savings banks.

RECOMMENDED ACTION: The agency recommends the Finance Commission approve the publication of the repeal of 7 TAC § 76.4(a) in the *Texas Register*.

RECOMMENDED MOTION: I move we approve publication of the proposed repeal of 7 TAC § 76.4(a) in the *Texas Register* for comment.

PROPOSED REPEAL OF 7 TAC § 76.4(a)

TITLE 7. Banking and Securities

Part 4. Texas Department of Savings and Mortgage Lending.

Chapter 76. Miscellaneous

Proposed repeal of § 76.4(a) Financial Statements; Annual Reports; Audits

The Finance Commission of Texas (the Commission) proposes the repeal of § 76.4(a) concerning Financial Statements; Annual Reports; Audits. The repeal of the rule is proposed to implement a statutory change made in the 83rd Legislative Session.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined there will be no fiscal implications for state government or for local government as a result of the repeal of this rule.

Commissioner Foster has also determined the public benefit anticipated as a result of the proposed repeal of § 76.4(a) will be the elimination of obsolete and duplicative financial reporting. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed repeal of § 76.4(a) may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The repeal is proposed under Texas Finance Code § 11.302 and § 96.002, which grant rulemaking authority to the Finance Commission of Texas.

The statutory provision affected by the proposed repeal is contained in Texas Finance Code, Chapter 96.

§ 76.4 Financial Statements; Annual Reports; Audits

~~(a) Before March 1 of each year, each savings bank shall submit a statement of condition (balance sheet) as of the last business day of December of the preceding year to the commissioner, upon a form to be prescribed and furnished by the commissioner.~~

(b) (a) For safety and soundness purposes, within 90 days of its fiscal year end, each savings bank is required to have an independent audit of its financial statements. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of 12 Code of Federal Regulations Part 363 Federal Deposit Insurance Corporation Regulations regarding annual independent audits and reporting requirements are incorporated herein, with the exception of any matters specifically addressed by the Act or its related rules.

(c) (b) A copy of the independent audit and all correspondence reasonably related to the audit shall be provided to the Commissioner upon completion.

Certification

The agency hereby certifies that the repeal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 21, 2013.

Caroline C. Jones
Deputy Commissioner/General Counsel
Texas Department of Savings and Mortgage Lending

5. Discussion and Possible Vote to Take Action on the Publication for Comment of Proposed Repeal of 7 TAC § 77.72 regarding Liquidity.

PURPOSE: The purpose of the repeal is to reconcile statutory changes made by the 83rd Legislative Session to the rules relating to state savings banks.

RECOMMENDED ACTION: The agency recommends the Finance Commission approve the publication of the repeal of 7 TAC § 77.72 in the *Texas Register*.

RECOMMENDED MOTION: I move we approve the publication of the proposed repeal of 7 TAC § 77.72 in the *Texas Register* for comment.

PUBLICATION FOR COMMENT OF
PROPOSED REPEAL OF 7 TAC § 77.72

TITLE 7. Banking and Securities

Part 4. Texas Department of Savings and Mortgage Lending.

Chapter 77. Loans, Investments, Savings and Deposits

Proposed repeal of § 77.72 Liquidity

The statutory provision affected by the proposed repeal is contained in Texas Finance Code, Chapter 92.

§ 77.72 Liquidity

The Finance Commission of Texas (the Commission) proposes the repeal of § 77.72 concerning Liquidity. The repeal of the rule is proposed to implement a statutory change made in the 83rd Legislative Session.

The rule is no longer necessary and causes a competitive disadvantage because it is not required of other depository charters.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined there will be no fiscal implications for state government or for local government as a result of repealing this rule.

Commissioner Foster has also determined the public benefit anticipated as a result of the proposed repeal of § 77.72 will be the elimination of unnecessary and burdensome monitoring and the elimination of overlap with more effective and comprehensive liquidity risk management policies. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed repeal of § 77.72 may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The repeal is proposed under Texas Finance Code §11.302 and § 96.002, which grant rulemaking authority to the Finance Commission of Texas.

Certification

The agency hereby certifies that the repeal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 21, 2013.

Caroline C. Jones
Deputy Commissioner/General Counsel
Texas Department of Savings and Mortgage Lending

**FOR INFORMATIONAL PURPOSES-CURRENT FORM OF 77.72
PROPOSED REPEAL WOULD ELIMINATE ENTIRE RULE**

77.72 A savings bank shall maintain liquidity in an amount not less than 10% of an amount equal to its average daily deposits for the most recently completed calendar quarter in cash or readily marketable investments. The term "cash" shall include unpledged demand accounts in other federally insured depository institutions, a Federal Home Loan or Federal Reserve Bank. Whether a security is readily marketable must be determined on an individual security basis; however, to be eligible for inclusion in "readily marketable investments" category:

- (1) the security must be a permissible investment under §77.71 of this title (relating to Investment in Securities);
- (2) the security must not be pledged or otherwise encumbered;
- (3) there must be an organized, regularly available market for exchange of the security; and
- (4) a sale of the security must settle (convert to cash) in the market within five business days or less. U.S. government or agency securities meet these requirements, including Federal Home Loan Bank stock. Private issue securities with a AAA or AA rating normally meet these criteria as well.

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6. Discussion and Possible Vote to Take Action on the Publication for Comment of Proposed Repeal of 7 TAC § 77.74 regarding Local Service Area Investment Requirement.

PURPOSE: The purpose of the repeal is to reconcile a statutory change made by the 83rd Legislative Session with the rules relating to state savings banks.

RECOMMENDED ACTION: The agency recommends the Finance Commission approve the publication of the repeal of 7 TAC § 77.74 in the *Texas Register*.

RECOMMENDED MOTION: I move we approve publication of the repeal of 7 TAC § 77.74 in the *Texas Register* for comment.

TITLE 7. Banking and Securities

Part 4. Texas Department of Savings and Mortgage Lending.

Chapter 77 Loans, Investments, Savings, and Deposits

Proposed repeal of § 77.74 Local Service Area Investment Requirement

~~§ 77.74 Local Service Area Investment Requirement~~

Certification

The agency hereby certifies that the repeal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 21, 2013.

Caroline C. Jones
Deputy Commissioner/General Counsel
Texas Department of Savings and Mortgage Lending

The Finance Commission of Texas (the Commission) proposes the repeal of § 77.74 concerning Local Service Area Investment Requirement. The repeal of the rule is proposed to implement a statutory change made in the 83rd Legislative Session.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined there will be no fiscal implications for state government or for local government as a result of enforcing of the repeal of this rule.

Commissioner Foster has also determined the public benefit anticipated as a result of the proposed repeal of § 77.74 will be the elimination of an unnecessary burden to the industry due to overlapping federal law. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed repeal of § 77.74 may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The repeal is proposed under Texas Finance Code §11.302 and § 92.201, which grant rulemaking authority to the Finance Commission of Texas.

The statutory provision affected by the proposed repeal is contained in Texas Finance Code, Chapter 94.

**FOR INFORMATIONAL PURPOSES-CURRENT FORM OF 77.74.
PROPOSED REPEAL WOULD ELIMINATE ENTIRE RULE**

77.74 (a) A savings bank shall maintain an amount equal to at least 15% of its local service area deposits invested in the following categories of assets and investments:

(1) first and second lien residential mortgage loans or foreclosed residential mortgage loans originated from within the savings bank's local service area;

(2) home improvement loans;

(3) interim residential construction loans;

(4) mortgage-backed securities secured by loans from within the savings bank's local service area;

(5) loans for community reinvestment purposes; and

(6) other loans made to customers in the savings bank's local service area that meet the definition of qualified thrift assets under Section 92.204.

(b) The board of directors of each savings bank shall approve at least annually the definition of the institution's local service area which shall incorporate the primary area, or areas from which the institution receives savings deposits. At the time a savings bank is chartered or converts into a savings bank, a savings bank may seek approval from the commissioner of the definition of its local service area and unless otherwise agreed to by the institution and the commissioner, the savings bank may rely on this definition for the duration of its corporate existence as a savings bank.

(c) For purposes of identifying qualifying loans and investments under subsection (a) of this section.

(1) Mortgage-backed securities shall include mortgage-backed bonds, mortgage pass-through securities, collateralized mortgage obligations, and such other securities approved by the commissioner which are collateralized by first or second lien residential mortgages.

(2) It shall be the responsibility of each institution to provide such information and evidence necessary to identify particular mortgage-backed securities as being secured by loans from within the institution's local service area such as the originator, the originator/servicer or such other information as may identify the underlying loans as being from the institution's local service area.

(3) Loans and investments described in subsection (a) of this section may include first and second lien residential mortgage loans and home improvement loans or residential construction loans originated from within the institution's local service area and sold by the institution or any subsidiary (including finance subsidiaries) of the savings bank within the preceding 12 months.

(d) Upon application by a savings bank, the commissioner may grant a limited term waiver from the requirements of subsection (a) of this section. Such application must include information and evidence that quality loans in the categories described in subsection (a) of this section are not available from within the institution's local service area.

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7. Discussion and Possible Vote to Take Action on the Publication for Comment of Proposed amendments to Chapter 80 – Title; §80.100 Licensing – General; §80.103 License Record Changes; §80.106 Renewals; §80.107 Fees; §80.200 Required Disclosures; §80.202 Prohibition on False, Misleading or Deceptive Practices and Improper Dealings; §80.203 Advertising; §80.204 Books and Records; §80.205 Mortgage Call Reports; and §80.301 Complaints, Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions and Proposed repeals of §80.101 Education Program; and §80.105 Request for Criminal History Eligibility Determination.

PURPOSE: The purpose of the amendments and repeals is to reconcile statutory changes made by the 83rd Legislative Session with the rules relating to residential mortgage loan companies.

RECOMMENDED ACTION: The agency recommends the Finance Commission approve the publication of the proposed amendments and repeals to 7 TAC 80 in the *Texas Register*.

RECOMMENDED MOTION: I move we approve for publication the proposed amendments and repeals to 7 TAC Chapter 80 in the *Texas Register* for comment.

TITLE 7. Banking and Securities

Part 4. Texas Department of Savings and Mortgage Lending.

Chapter 80. ~~Texas Residential Mortgage Loan Originator Regulations~~ Residential Mortgage Loan Companies

Proposed amendments to Chapter 80 – Title; §80.1 Scope; §80.2 Definitions; §80.100 Licensing – General; §80.103 License Record Changes; §80.106 Renewals; §80.107 Fees; §80.200 Required Disclosures; §80.202 Prohibition on False, Misleading or Deceptive Practices and Improper Dealings; §80.203 Advertising; §80.204 Books and Records; §80.205 Mortgage Call Reports; and §80.301 Complaints, Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions.

Proposed repeals of §80.101 Education Program; and §80.105 Request for Criminal History Eligibility Determination.

The Finance Commission of Texas (the Commission) proposes the amendments to §80.1; §80.2; §80.100; §80.103; §§80.106 - 80.107; §80.200; §§80.202 -80.205; and §80.301 and the repeal of §80.101 and §80.105 to implement statutory changes made in the 83rd Legislative Session.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined there will be no fiscal implications for state government or for local government as a result of enforcing, administering, or repealing these rules.

Commissioner Foster has also determined the public benefit anticipated as a result of the proposed amendments and repeals will be clarification and implementation of the statute. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments to and the repeals may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar,

Suite 201, Austin, TX 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments and repeals are proposed under Texas Finance Code §156.102, which grants rulemaking authority to the Finance Commission of Texas.

The statutory provision affected by the proposed amendments and repeals are contained in Texas Finance Code, Chapters 156 and 180.

§ 80.1 Scope

This chapter governs the licensing, registration, and conduct of ~~Residential Mortgage Loan Originators; Mortgage Companies, Financial Services Companies, Credit Union Subsidiary Organizations, Auxiliary Mortgage Loan Activity Companies, and Independent Contractor Loan Processors and Underwriters~~ under Finance Code, Chapter 156. This chapter also governs the conduct of Residential Mortgage Loan Originators who are subject to or engage in regulated activities under Finance Code, Chapter 156 and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 (“SAFE Act”), except for individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code, § 180.251(c). The terms “licensed” and “registered” may be used interchangeably.

§ 80.2 Definitions

As used in this chapter, the following terms have the meanings indicated:

(1) “Branch Office” means any office that is separate and distinct from the company’s headquarters location, whether located in Texas or not, which conducts mortgage business on residential real estate located in the state of Texas.

(2) “Commissioner’s designee” means an employee of the department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner’s designee is deemed to be the Commissioner’s

authorized "personnel or representative" as such term is used in Finance Code, Chapter 156.

(3) "Company" means, for purposes of this chapter, a residential mortgage loan company, as that term is defined in Finance Code, § 156.002.

(4) "Control Person" means an individual that directly or indirectly exercises control over a company. Control is defined by the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that:

(A) is a director, general partner or executive officer;

(B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(C) in the case of an LLC, managing member; or

(D) in the case of a partnership, has the right to receive upon dissolution, or had contributed, 10% or more of the capital, is presumed to control that company.

~~(5) "Dwelling" has the meaning assigned by § 103(v) of the Truth-in-Lending Act (15 U.S.C. § 1602(v)).~~

(56) "One-to-four family residential real property" means improved or unimproved real property, or any portion of or interest in any such real property, on which a one-to-four family dwelling, including a manufactured home, is being or is to be constructed or situated.

~~(7) "Originator" means, for purposes of this chapter, a residential mortgage loan originator, as that term is defined in Finance Code, § 180.002.~~

(68) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. It must have a street

address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

(79) "Qualifying Individual" shall have the same meaning as that provided in Finance Code, § 156.002. Additionally, the license held by the qualifying individual must be held in a status, which authorizes them to conduct regulated activities, and is sponsored by the company for which they are the qualifying individual.

~~(810)~~ "Residential Mortgage Loan" shall have the same meaning as that provided in Finance Code, § 180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

§ 80.100 Licensing - General

(a) A person is required to be licensed under Finance Code, Chapter 156 if the person:

(1) Engages in the business of residential mortgage loan origination on real property located in the state of Texas;

(2) Represents or holds himself out to the public as a "loan officer," "mortgage consultant," "mortgage broker," "loan modification/refinance consultant," or "residential mortgage loan originator," or otherwise represents that the individual can or will perform the activities of a residential mortgage loan originator;

(3) Provides disclosures to a prospective borrower or discusses or explains such disclosures. Disclosures include but are not limited to the residential mortgage loan originator disclosure form; truth in lending disclosures, the good faith estimate of settlement costs, affiliated business arrangements; and disclosures relating to the dual role as a residential mortgage loan originator and real estate broker or sales agent. An individual who prepares a required disclosure under the direction and supervision of a licensed residential mortgage loan originator, but who does not discuss the disclosure with a prospective borrower shall not be deemed to have provided a disclosure for purposes of this paragraph;

(4) Determines the lender(s) or investor(s) to whom the loan will be submitted;

(5) Issues or signs a prequalification letter or preapproval letter; or

(6) Is a loan processor or underwriter who is an independent contractor.

(b) Applications for a company or an originator license must be submitted through the Nationwide Mortgage Licensing System and Registry and must be on the prescribed application forms.

(c) An application, notice, or any other filing with the department will only be deemed submitted if it is complete. A filing is complete only if all required supporting documentation is included and only if all required fees have been received by the department. The application may be deemed withdrawn if an applicant fails to provide to the department, within 30 days from the date of request, any information or supplemental documentation.

(d) An applicant may be issued a license in an

inactive status if the applicant completes the required application form and complies with all requirements of licensure except for the requirement of an approved sponsorship. Upon submission and approval of a sponsorship, the license may be changed to active status.

(e) The department is limited to those specific license and registration status codes available through the Nationwide Mortgage Licensing System and Registry. The Nationwide Mortgage Licensing System and Registry maintains a website that contains the specific status codes available and their definitions. The available status codes changed by the department are reflected in the licensee's record on the Nationwide Mortgage Licensing System and Registry and on the Nationwide Mortgage Licensing System and Registry Consumer Access website.

(f) The Commissioner may authorize an investigation to be conducted against an originator if there is reasonable cause to suspect or believe that an originator may have been convicted of a criminal offense which may constitute grounds for the suspension or revocation of that originator's license.

(g) The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the issuance of any license pursuant to Finance Code, Chapter 156 as is deemed necessary or advisable to determine that the requirements of Finance Code, Chapter 156 have been met.

(h) The Commissioner or the Commissioner's designee may at their discretion, after reviewing the circumstances of each situation, issue a license on a conditional basis.

§ 80.101 Education Program

§ 80.103 License Record Changes

(a) Each originator's application for a license under Finance Code, Chapter 156 requires the applicant to indicate the location(s) at which he or she proposes to conduct licensed activity. Proper sponsorship and disclosure of each location at which an originator is conducting regulated activities is required to be on

their Nationwide Mortgage Licensing System and Registry record.

(b) A licensee shall notify the Commissioner by filing a license amendment through the Nationwide Mortgage Licensing System and Registry of the following:

- (1) any change of address;
- (2) ~~personal~~-name change; or
- (3) a new, or changed company, organization, or assumed name.

~~§ 80.105 Request for Criminal History Eligibility Determination~~

§ 80.106 Renewals

(a) A license may be renewed upon:

(1) submission of a completed application for renewal through the Nationwide Mortgage Licensing System and Registry together with the payment of the applicable renewal application fee; and

(2) determination that the applicant continues to meet the minimum requirements for license issuance; and

~~(3) providing satisfactory evidence to the Commissioner that the license holder has completed the continuing education requirements of Finance Code, §180.060.~~

(b) Renewal of a license may be denied for reasons provided in Finance Code, § 156.208.

~~(c) For service members on active military duty, as detailed in Occupations Code, Chapter 55, the department will comply with the requirements as set out in that statute.~~

(cd) The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the renewal of any license pursuant to Finance Code, Chapter 156 as is deemed necessary

or advisable to determine compliance with the requirements of Finance Code, Chapter 156.

§ 80.107 Fees

(a) Fees relating to a license or registration shall be established by the Commissioner in accordance with Finance Code, Chapter 156. The amount of the fees may be modified upon not less than 30 days advance notice posted on the department's website.

(b) All fees are nonrefundable and nontransferable.

(c) The Commissioner may, in addition to any disciplinary action, collect a fee in an amount not to exceed \$50 for any returned check or credit card chargeback.

(d) For examinations that are conducted out of state, the Commissioner may collect reimbursement of actual expenses. Actual expenses incurred will be in compliance with department's policies and procedures.

§ 80.200 Required Disclosures

(a) An originator sponsored under Chapter 156 shall include the following notice, Figure: 7 TAC §80.200(a), to a residential mortgage loan applicant with an initial application for a residential mortgage loan:

Figure 7 TAC §80.200(a)

(b) At each physical office, and on its website, a company or an originator shall conspicuously post the following notice:

Figure 7 TAC §80.200(b)

(c) A notice is deemed to be conspicuously posted under subsection (b) of this section if a customer with 20/20 vision can read it from each place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted. If applicable a notice is deemed conspicuously posted if prominently displayed on the website.

§ 80.202 *Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings*

(a) No company or originator may:

(1) knowingly misrepresent his or her relationship to a mortgage applicant or any other party to an actual or proposed residential mortgage loan transaction;

(2) knowingly misrepresent or understate any cost, fee, interest rate, or other expense in connection with a mortgage applicant's applying for or obtaining a residential mortgage loan;

(3) disparage any source or potential source of residential mortgage loan funds in a manner which knowingly disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly participate in or permit the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a residential mortgage loan;

(5) as provided for by the Real Estate Settlement Procedures Act and its implementing regulations, broker, arrange, or make a residential mortgage loan in which the company or originator retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommend or encourage default or delinquency or continuation of an existing default or delinquency by a mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(7) induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan;

(8) alter any document produced or issued by

the department, unless otherwise permitted by statutory regulation; or

(9) engage in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

(b) The term "improper dealings" in Finance Code, §156.303(a)(3) includes, but is not limited to the following:

(1) Acting negligently in performing an act for which a person is required under Finance Code, Chapter 156 to hold a license;

(2) Violating any provision of a local, State of Texas, or federal, constitution, statute, rule, ordinance, regulation, or final court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of Finance Code, Chapter 156 or this chapter including, but not limited to, the following:

(A) Real Estate Settlement Procedures Act, ~~12 U.S.C. Chapter 2600;~~

(B) Regulation X, ~~24 C.F.R. Part 3500;~~

(C) Consumer Credit Protection Act, ~~15 U.S.C. Chapter 1600 (Truth in Lending Act);~~

(D) Regulation Z, ~~12 C.F.R. Part 226;~~

(E) Equal Credit Opportunity Act, ~~15 U.S.C. §1691;~~

(F) Regulation B, ~~12 C.F.R. Part 202;~~ and

(G) Texas Constitution, Article XVI, §50.

(3) Representing to a mortgage applicant that a charge or fee which is payable to the company or originator is a "discount point" unless the loan closes and:

(A) The company or originator is the lender in the transaction. For purposes of this paragraph, the company or originator is deemed to be the lender if the company or originator, is the payee as

evidenced on the face of the note or other written evidence of indebtedness; or

(B) The company or originator, is not the lender, but demonstrates by clear and convincing evidence that the lender has charged or collected discount point(s) or other fees which the company or originator has remitted to the lender on behalf of the mortgage applicant, to buy down the interest rate on a residential mortgage loan.

(C) A company or an originator engages in a false, misleading or deceptive practice or improper dealings when in connection with the origination of a residential mortgage loan:

(i) The company or originator offers other goods or services to a consumer in a separate but related transaction and the company or originator engages in a false misleading or deceptive practice in the related transaction; or

(ii) The sponsor of an originator who offers other goods or services to a consumer in a separate but related transaction and the person engages in a false, misleading or deceptive practice in the related transaction; and the sponsor knew or should have known of the transaction.

(D) An originator receiving a verbal or written inquiry about his or her services shall respond accurately to any questions about the scope and nature of such services and any costs.

§ 80.203 Advertising

(a) Licensees who advertise rates, terms, or conditions must comply with the disclosure requirements of 12 C.F.R. §226.24 (Regulation Z).

(b) Any advertisement of residential mortgage loans which are offered by or through a mortgage company ~~banker~~ or originator shall conform to the following requirements:

(1) An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material

requirements or limitations, the advertisement shall specify those requirements or limitations.

(2) Except as provided in subsection (c) of this section, if the person who caused the advertisement to be published is an originator the advertisement shall contain:

(A) the name of the originator followed by the phrase "Residential Mortgage Loan Originator";

(B) the originator's Nationwide Mortgage Licensing System and Registry identification number;

(C) the name of the company, as designated in the records of the Commissioner as of the date of the advertisement, through or for whom the originator conducts the advertised mortgage origination activities; and

(D) the company's physical office or branch office street address in Texas.

(3) An advertisement shall not make any statement or omit to make any statement the result of which is to present a misleading or deceptive impression to consumers.

(4) An advertisement shall otherwise comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a credit transaction. However, the requirements of subsection (b)(2) of this section shall not apply to:

(1) any advertisement which indirectly promotes a credit transaction and which contains only the name of the company or originator and does not contain any contact information, such as the inscription of the name on a coffee mug, pencil, youth league jersey, or other promotional item; or

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors,

builders, and other commercial entities that is not intended for distribution to consumers.

§ 80.204 *Books and Records*

(a) In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 156 and this chapter, each company or originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each company or originator is required to maintain, at the location specified in their official record on file with the department, the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received the residential mortgage loan file shall contain at a minimum the following:

(A) a copy of the initial signed and dated residential mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement, documentation of the timely denial, or other disposition of the application for a residential mortgage loan;

(C) a copy of the signed and dated disclosure statement required by Finance Code, Chapter 156 and §80.200(a) of this chapter;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage

applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to applicants required by Finance Code, §343.105; and

(F) a copy of the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet; if applicable.

(2) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) name of each mortgage applicant and how to contact them;

(B) date of the initial residential mortgage loan application;

(C) description of the disposition of the application for a residential mortgage loan;

(D) identity of the person or entity who initially funded and/or acquired the residential mortgage loan and information as to how to contact them; and

(E) full name of the originator and their Nationwide Mortgage Licensing System and Registry identification number.

(3) General Business Records. General business records include the following:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the mortgage lending ~~brokerage~~ business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all company employees, independent contractors and all others compensated by such originator in connection with the mortgage lending business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to mortgage lending services including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(c) A company and/or originator shall maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) A company and/or originator shall maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) All books and records required by this section shall be maintained in good order and shall be produced for the Commissioner or the Commissioner's designee upon request. Failure to

produce such books and records upon request, after a reasonable time for compliance, may be grounds for suspension or revocation of a license.

(f) All books and records required by this section shall be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) An originator may meet applicable recordkeeping requirements if his or her sponsoring company maintains the required records.

(h) Upon termination of operations, the licensee shall notify the Commissioner, in writing, within ten days where the required records will be maintained for the prescribed periods. If such records are transferred to another licensee the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Commissioner.

§ 80.205 Mortgage Call Reports

(a) Call Report.

(1) A company shall file a mortgage call report on a quarterly basis. The filing deadlines are set by the Nationwide Mortgage Licensing System and Registry.

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

(3) The call report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(b) Statement of Condition Report.

(1) A company shall file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(c) Submission of a call report or statement of condition report, by a company, satisfies the requirements of an originator under Finance Code, §180.101 for the period of sponsorship, provided that the originator's information is included in the report.

(d) Failure to file a mortgage call report or a statement of condition report may ~~can~~ result in an administrative action ~~penalty for each missed or late filing~~.

§ 80.301 Complaints, Investigations, Administrative Penalties, and Disciplinary and /or Enforcement Actions

(a) Upon receipt of a written complaint alleging acts or omissions of a person, as defined in Finance Code, §180.002(14), required to be licensed under Finance Code, Chapter 156, the Commissioner or the Commissioner's designee will make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation:

(1) if it has been determined that the complaint warrants an investigation, advise all parties who are subject of the complaint by written notice that a complaint has been filed and an investigation will be conducted. The investigation will be conducted as is deemed appropriate in light of all the relevant facts and circumstance then known. Such investigation may include any or all of the following:

(A) review of documentary evidence;

(B) interviews with complainants, licensees, and third parties;

(C) obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies; and

(D) other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.

(2) if determined that a complaint does not warrant investigation, advise the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered, and close the file.

(b) The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 156 and this chapter.

(c) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 156.

(d) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 156.

(e) A complaint which names a company or sponsored originator as the subject of the complaint is also a complaint against the qualifying individual at the time of any alleged violation. The qualifying individual of a company is responsible for all acts and conduct performed by or through the company and is required to fulfill his or her professional responsibility to the Commissioner and members of the public.

(f) If the Commissioner determines that a person has violated the requirements of Finance Code, Chapter 156, this chapter, or any order pursuant to Finance Code, Chapter 156 or this chapter, the Commissioner, after notice and opportunity for

hearing, may impose an administrative penalty on that person. Such penalties shall not exceed \$25,000 per violation. The amount of the violation is at the Commissioner's discretion. In determining the amount of any administrative penalty(ies) for any violation(s) of Finance Code, Chapter 156 or this chapter, the Commissioner shall consider such factors as required by Finance Code, §156.302.

(g) If the Commissioner has reasonable cause to believe that a licensee has violated or is about to violate Finance Code, Chapter 156, this chapter, or an order issued pursuant to this chapter, the Commissioner may, without notice and hearing, issue an order to cease and desist a particular action or an order to take affirmative action, or both, to enforce compliance with Finance Code, Chapter 156 and this chapter. Any such order must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom an order is made requests a hearing, the Commissioner shall set and give notice of a hearing to be held in accordance with this chapter and Government Code, Chapter 2001. Based on the findings of fact and conclusions of law, the Commissioner may find by order that a violation has or has not occurred.

(h) The Commissioner may, after giving notice and an opportunity for hearing, impose against any person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$1,000 for each day on which the violation is continuing. In addition to any other remedy provided for by law, the Commissioner may institute in District Court for Travis County an action for injunctive relief and/or to collect the administrative penalty. A bond is not required of the Commissioner with respect to any request for injunctive relief under this subsection.

(i) The Commissioner may order disciplinary action after notice and opportunity for hearing against a company or an originator if the Commissioner becomes aware during the term of the license of any fact that would have been grounds for denial of an original license if the fact had been known by the Commissioner on the date the license was issued.

The agency hereby certifies that the amendments and repeals have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 21, 2013.

Caroline C. Jones
Deputy Commissioner/General Counsel
Texas Department of Savings and Mortgage Lending

Certification

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8. Discussion and Possible Vote to Take Action on the Publication for Comment of Proposed Amendments to 7 TAC Chapter 81— Title; §81.100 Licensing – General; §81.105 Fees; §81.200 Required Disclosures; §81.202 Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings; §81.203 Advertising; and §81.205 Mortgage Call Reports; and Proposed new rules in Chapter 81 - §81.106 Education Program; §81.107 License Record Changes; §81.108 Background.

PURPOSE: The purpose of the amendments and new rules is to reconcile statutory changes made by the 83rd Legislative Session with the rules relating to mortgage bankers registration and residential mortgage loan originators. The new rules are currently contained in 7 TAC Chapter 80. Due to the legislative changes to the individual license, they are more appropriately contained in 7 TAC Chapter 81.

RECOMMENDED ACTION: The agency recommends the Finance Commission approve the publication of the proposed amendments and new rules to 7 TAC Chapter 81 in the *Texas Register*.

RECOMMENDED MOTION: I move we approve the publication of the proposed amendments to and new rules in 7 TAC Chapter 81 in the *Texas Register* for comment.

TITLE 7. Banking and Securities

Part 4. Texas Department of Savings and Mortgage Lending.

Chapter 81. Mortgage Bankers Registration and Residential Mortgage Loan Originators Licensing

Proposed amendments to Chapter 81 – Title; §81.1 Scope; §81.2 Definitions; §81.100 Licensing – General; §81.105 Fees; §81.200 Required Disclosures; §81.202 Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings; §81.203 Advertising; and §81.205 Mortgage Call Reports.

Proposed new rules in Chapter 81 – §81.106 Education Program; §81.107 License Record Changes; and §81.108 Background.

The Finance Commission of Texas (the Commission) proposes amendments to §81.1; §81.2; §81.100; §81.105; §81.200; §§81.202 – 81.203; and §81.205 and new rules §§81.106 – 81.108. These amendments and new rules are proposed to implement statutory changes made in the 83rd Legislative Session.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Foster has also determined the public benefit anticipated as a result of these proposed amendments and new rules will be to implement statutory changes and clarifications relating to individual licenses. The new rules are currently contained in 7 TAC Chapter 80. Due to legislative changes to the individual license, they are more appropriately contained in 7 TAC Chapter 81. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments and new rules may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by email to

smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments and new rules are proposed under Texas Finance Code §157.011 which grants rulemaking authority to the Finance Commission of Texas.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 157 and 180.

§ 81.1 Scope

This chapter governs the licensing, registration, and conduct of residential mortgage loan originators and mortgage bankers under Finance Code, Chapter 157 and Chapter 180, the ~~Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009~~ (“SAFE Act”), except for individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code, § 180.251(c). The terms “licensed” and “registered” may be used interchangeably.

§ 81.2 Definitions

As used in this chapter, the following terms have the meanings indicated:

(1) “Commissioner’s designee” means an employee of the department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner’s designee is deemed to be the Commissioner’s authorized “personnel or representative” as such term is used in Finance Code, Chapter 157.

(2) “Criminal Offense” means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or

(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.

(3) "Department" means the Texas Department of Savings and Mortgage Lending.

(4) "Mortgage banker" shall have the same meaning as that provided in Finance Code, § 157.002.

(5) "Originator" means, for purposes of this chapter, a Residential Mortgage Loan Originator, as that term is defined in Finance Code, § 180.002.

(56) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a

manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of an originator need not be the location at which such originator's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for examination during normal business hours.

(67) "Residential mortgage loan" shall have the same meaning as that provided in Finance Code, § 180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

§ 81.100 Licensing – General

(a) An individual is required to be licensed under Finance Code, Chapter 157 if the individual:

(1) Engages in the business of residential mortgage loan origination on real property located in the state of Texas;

(2) Represents or holds himself out to the public as a "loan officer," "mortgage consultant," "mortgage broker," "loan modification/refinance consultant," or "residential mortgage loan originator," or otherwise represents that the individual can or will perform the activities of a residential mortgage loan originator;

(3) Provides disclosures to a prospective borrower or discusses or explains such disclosures. Disclosures include but are not limited to the residential mortgage loan originator disclosure form; truth in lending disclosures, the good faith estimate

of settlement costs, affiliated business arrangements; and disclosures relating to the dual role as a residential mortgage loan originator and real estate broker or sales agent. An individual who prepares a required disclosure under the direction and supervision of a licensed residential mortgage loan originator, but who does not discuss the disclosure with a prospective borrower shall not be deemed to have provided a disclosure for purposes of this paragraph;

(4) Determines the lender(s) or investor(s) to whom the loan will be submitted;

(5) Issues or signs a prequalification letter or preapproval letter; or

(6) Is a loan processor or underwriter who is an independent contractor.

(b) Applications for a company registration or an originator license must be submitted through the Nationwide Mortgage Licensing System and Registry and must be on the prescribed application forms.

(ca) The department is limited to those specific license and registration status codes available through the Nationwide Mortgage Licensing System and Registry. The Nationwide Mortgage Licensing System and Registry maintains a website that contains the specific status codes available and their definitions. The available status codes changed by the department are reflected in the licensee's record on the Nationwide Mortgage Licensing System and Registry and on the Nationwide Mortgage Licensing System and Registry Consumer Access website.

(db) An applicant may be issued a license in an inactive status if the applicant completes the required application form and complies with all requirements of licensure except for the requirement of an approved sponsorship. Upon submission and approval of a sponsorship, the license may be changed to active status.

(ee) An originator, through written notice to the department, may place his or her license in an inactive status at any time during the license term.

While in an inactive status an originator must not engage in the origination of residential mortgage loans as defined in §81.2(7) of this chapter, and must continue to meet the statutory requirements of the license. Upon submission and approval of a sponsorship, the license may be changed to an active status.

(fd) The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the issuance or renewal of any license pursuant to Finance Code, Chapter 157 as is deemed necessary or advisable to determine that the requirements of Finance Code, Chapter 157 have been met and maintained.

(ge) The Commissioner may authorize an investigation to be conducted against an originator if there is reasonable cause to suspect or believe that an originator may have been convicted of a criminal offense which may constitute grounds for the suspension or revocation of that originator's license.

(hf) An application, notice, or any other filing with the department will only be deemed submitted if it is complete. A filing is complete only if all required supporting documentation is included and only if all required fees have been received by the department. The application may be deemed withdrawn if an applicant fails to provide to the department, within 30 days from the date of request, any information or supplemental documentation.

(i) The Commissioner or the Commissioner's designee may at their discretion, after reviewing the circumstances of each situation, issue a license on a conditional basis.

§ 81.105 Fees

(a) Fees relating to a license or registration shall be established by the Commissioner in accordance with Finance Code, Chapter 157. The amount of the fees may be modified upon not less than 30 days advance notice posted on the department's website.

(b) All fees are nonrefundable and nontransferable.

(c) The Commissioner may, in addition to any disciplinary action, collect a fee in an amount not to exceed \$50 for any returned check or credit card chargeback.

(d) For examinations that are conducted out of state, the Commissioner may collect reimbursement of actual expenses. Actual expenses incurred will be in compliance with department's policies and procedures.

§ 81.106 Education Program

(a) Pre-licensing and continuing education courses required under Finance Code, Chapter 180 shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry.

(b) In addition to the pre-licensing educational requirements, in Finance Code, Chapter 180, a residential mortgage loan originator must complete three hours of education classes specifically relating to Texas statutes and rules.

§ 81.107 License Record Changes

(a) Proper sponsorship and disclosure of each location at which an originator is conducting regulated activities is required to be on their Nationwide Mortgage Licensing System and Registry record.

(b) A licensee shall notify the Commissioner by filing a license amendment through the Nationwide Mortgage Licensing System and Registry of the following:

(1) any change of address;

(2) name change; or

(3) a new, or changed company, organization, or assumed name.

§ 81.108 Background

(a) In connection with each application for an originator's license, the applicant shall provide authorization and fingerprints as prescribed by the

Nationwide Mortgage Licensing System and Registry necessary to conduct a criminal background history check through the Federal Bureau of Investigation.

(b) In connection with each application for an originator's license, the Commissioner may conduct a criminal background history check through the Texas Department of Public Safety.

(c) In connection with each application for the issuance of an originator's license, the applicant shall provide authorization for the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain an independent credit report from a consumer reporting agency.

(d) In connection with each application for the issuance of an originator's license, the applicant shall provide to the Commissioner and the Nationwide Mortgage Licensing System and Registry information related to any administrative, civil, or criminal findings by a governmental jurisdiction.

§ 81.200 Required Disclosures

(a) An originator sponsored under Chapter 157 shall include the following notice, Figure 7 TAC §81.200(a), to a residential mortgage loan applicant with an initial application for a residential mortgage loan:

Figure 7 TAC §81.200(a)

(b) A mortgage banker or originator shall maintain in its records evidence of timely delivery of the disclosure in subsection (a) of this section.

(c) At each physical office, and on its website, a mortgage banker or an originator shall conspicuously post the following notice:

Figure 7 TAC §81.200(c)

(d) A notice is deemed to be conspicuously posted under subsection (c) of this section if a customer with 20/20 vision can read it from each place where he or she would typically conduct business or if it is

included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted. If applicable, a notice is deemed conspicuously posted if prominently displayed on the website.

§ 81.202 Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings

(a) No originator may:

(1) knowingly misrepresent his or her relationship to a residential mortgage loan applicant or any other party to an actual or proposed residential mortgage loan transaction;

(2) knowingly misrepresent or understate any cost, fee, interest rate, or other expense in connection with a residential mortgage loan applicant's applying for or obtaining a residential mortgage loan;

(3) disparage any source or potential source of residential mortgage loan funds in a manner which knowingly disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly participate in or permit the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a residential mortgage loan;

(5) as provided for by the Real Estate Settlement Procedures Act and its implementing regulations, broker, arrange, or make a residential mortgage loan in which the originator retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommend or encourage default or delinquency or continuation of an existing default or delinquency by a residential mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(7) induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan;

(8) alter any document produced or issued by the department, unless otherwise permitted by statute or regulation; or

(9) engage in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

(b) The term "improper dealings" in Finance Code, §157.024(a)(3) includes, but is not limited to the following:

(1) Acting negligently in performing an act for which a person is required under Finance Code, Chapter 157 to hold a license;

(2) Violating any provision of a local, State of Texas, or federal, constitution, statute, rule, ordinance, regulation, or final court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of Finance Code, Chapter 157 or this chapter including, but not limited to, the following:

(A) Real Estate Settlement Procedures Act, ~~12 U.S.C. Chapter 2600~~;

(B) Regulation X, ~~24 C.F.R. Part 3500~~;

(C) Consumer Credit Protection Act, ~~15 U.S.C. Chapter 1600~~ (Truth in Lending Act);

(D) Regulation Z, ~~12 C.F.R. Part 226~~;

(E) Equal Credit Opportunity Act, ~~15 U.S.C. §1691~~;

(F) Regulation B, ~~12 C.F.R. Part 202~~; and

(G) Texas Constitution, Article XVI, §50.

(c) A mortgage banker or originator engages in a false, misleading or deceptive practice or improper dealings when in connection with the origination of a mortgage loan:

(1) The mortgage banker or originator offers other goods or services to a consumer in a separate but related transaction and the mortgage banker or originator engages in a false misleading or deceptive practice in the related transaction; or

(2) The originator offers other goods or services to a consumer in a separate but related transaction and the mortgage banker or originator engages in a false, misleading or deceptive practice in the related transaction, and the mortgage banker knew or should have known of the transaction; or

(3) A mortgage banker or originator affiliates with a second originator who offers other goods or services to a consumer in a separate but related transaction, and the second originator engages in a false, misleading or deceptive practice in the related transaction when the mortgage banker or originator participates with the second originator in the separate transaction or when the mortgage banker allows the second originator to originate loans in the name of the mortgage banker and the mortgage banker knew or should have known of the related transaction performed by the second originator.

(d) An originator receiving a verbal or written inquiry about his or her services shall respond accurately to any questions about the scope and nature of such services and any costs.

§ 81.203 Advertising

(a) Licensees who advertise rates, terms, or conditions must comply with the disclosure requirements of 12 C.F.R. §226.24 (Regulation Z).

(b) Any advertisement of residential mortgage loans which are offered by or through a mortgage banker

or originator shall conform to the following requirements:

(1) An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations;

(2) Except as provided in subsection (c) of this section, the advertisement shall contain:

(A) the name of the originator followed by the name of the sponsoring mortgage banker, as designated in the records of the Commissioner as of the date of the advertisement;

(B) the originator's Nationwide Mortgage Licensing System and Registry identification number; and

(C) the mortgage banker's physical office address. If a physical office exists in this State, the advertisement must contain that address; otherwise, it must contain the address of a location registered with the department.

(3) An advertisement shall not make or omit any statement the result of which is to present a misleading or deceptive impression to consumers; and

(4) An advertisement shall otherwise comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a credit transaction. However, the requirements of subsection (b)(2) of this section shall not apply to:

(1) any advertisement which indirectly promotes a credit transaction and which contains only the name of the mortgage banker or originator and does not contain any contact information, such as the inscription of the name on a coffee mug, pencil, youth league jersey, or other promotional item; or

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers.

§ 81.205 Mortgage Call Reports

(a) Call Report.

(1) A mortgage banker shall file a mortgage call report on a quarterly basis. The filing deadlines are set by the Nationwide Mortgage Licensing System and Registry.

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

(3) The call report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(b) Statement of Condition Report.

(1) A mortgage banker shall file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(c) Submission of a call report or statement of condition report, by a mortgage banker, satisfies the requirements of an originator under Finance Code, §180.101 for the period of sponsorship, provided that the originator's information is included in the report.

(d) Failure to file a mortgage call report or statement of condition report may ~~can~~ result in an administrative action ~~penalty for each missed or late filing~~.

Certification

The agency hereby certifies that the proposed amendments and new rules have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 21, 2013.

Caroline C. Jones
Deputy Commissioner/General Counsel
Texas Department of Savings and Mortgage Lending

9. Discussion of and Possible Action Regarding Anticipated and Pending Litigation:

a. Anticipated Litigation

None.

c. Pending Litigation

Khosrow Khani v. Texas SML; Cause No. D-1-GN-13-000207, 200th Judicial District Court of Travis County, Texas. Involves a denial of Plaintiff's application to renew his previously issued mortgage loan originator conditional license that was subject to restrictions. The lawsuit was filed January 17, 2013 and served on the agency on January 23, 2013. The Department is being represented by the Attorney General. An answer was filed on February 6, 2013.

UPDATE: The case was assigned to an administrative law judge on May 1, 2013.